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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,616	08/29/2001	David A. Braun	10017258-1	5965

7590 12/24/2003

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Intellectual Property Administration
P.O. Box 272400
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EXAMINER

POPE, DARYL C

ART UNIT	PAPER NUMBER
2632	

DATE MAILED: 12/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/940,616	BRAUN, DAVID A.	
	Examiner	Art Unit	
	DARYL C POPE	2632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 November 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

ART REJECTION:

Claim Rejections - 35 USC § 103

2. **Claims 1-3,5-16, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lutes in view of Mozer for the reasons of record as discussed in the previous office action.**
3. **Claims 4 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lutes in view of Mozer as applied to claims 1 and 14 above, respectively, and further in view of Puchek et al for the reasons of record as discussed in the previous office action.**

REMARKS:

Response to Arguments

4. Applicant's arguments filed 11/21/03 have been fully considered but they are not persuasive.

5. **APPLICANT'S ARGUMENTS:**

1) "When making an obvious rejection under 35 U.S.C. 103, a necessary condition is that the combination of the cited references must teach or suggest all claim limitations.....Consequently, the present invention is not obvious in view of the Examiner's proposed combination."

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6. EXAMINER'S RESPONSE:

1) The applicant is asserting that the combination of references used in the art rejection does not read on the claimed subject matter because all claim limitations are not met by that combination. The applicant further goes on to summarize the functions of the circuit of Mozer by listing the functions of the circuitry of Mozer, in an attempt to provide an example of why Mozer would not have compensated for the deficiencies of Lutes, in view of the claimed subject matter.

Although applicant has correctly listed a number of functions of the circuitry of Mozer, the applicant has left out the most important function, and the main reason why Mozer was combined with Lutes for the purpose of rejecting the claimed subject matter. Contrary to applicant's assertion, the circuitry of Mozer does perform comparing and matching functions based on entered user codes with stored codes in the form of script processing(see: column 5, lines 7-19).

Mozer teaches user code recognition, comparing, and matching in the form of audio signal recognition, which inherently includes matching and comparison functions. Furthermore, the user customizable screening query(see: Mozer, column 5, lines 38-45) are, as well, a form of code comparing and matching, since specified speech signals received would have been required in order to produce specified messages responses, which basically is a form of code recognition wherein the speech signals are the entered code. Even the applicant utilizes sound as the user code as disclosed in claim 5, which is dependent on claim 1, and therefore includes all of the limitations thereof.

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In conclusion, the examiner contends, how can the applicant accuse Lutes in view of Mozer as not meeting the limitations of the claimed subject matter due to the assertion that the combination does not teach all of the claimed subject matter, when Mozer clearly teaches use of logic circuitry that performs comparing and matching function which perform in the same manner as that in the claimed invention? In view of this, the applicant's arguments are not deemed persuasive.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

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or faxed to:

(703) 872-9314(for formal communications intended for entry)

and as well:

(703) 872-9314(for informal or draft communications, please label

"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daryl C. Pope whose telephone number is (703) 305-4838. The examiner can normally be reached on M-Th from 8:30 to 6:00 since the examiner works on a compressed work schedule in which every Friday is the examiner's day off.

All interviews requested, whether personal or telephonic, are to be scheduled for times between 11:00 a.m. and 5:00 p.m. on Tuesdays-Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu, can be reached on (703) 308-6730. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

Daryl C. Pope

Dec. 22, 2003



DARYL POPE
PRIMARY EXAMINER